IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 8 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH TAX

Versus

PARTHIVKUMAR HARSHADKUMAR LR OF LATE HARSHADKUMAR KEVALLAL

Appearance:

1. WEALTH TAX REFERENCE No. 8 of 1987

MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue,

the following question is referred for our opinion in respect of assessment years 1973-74 to 1976-77 :-

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the valuation of a Bungalow known as `Kumkum' is required to be made in accordance with section 7(4) of the Wealth-tax Act, 1957, read with Rule 1BB of the Rules ?"

2. We have heard Mr BB Naik, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. In view of the fact that the Tribunal has categorically recorded a finding that for valuing the property in accordance with Rule 1BB of the Wealth-tax Rules, many new facts are required to be investigated and brought on record, for example, the situation where the rule would not apply as provided in sub-rule (5), the question referred to us shall have to be modified to read as under :-

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the valuation of a Bungalow known as `Kumkum' is required to be made in accordance with section 7(4) of the Wealth-tax Act, 1957 ?"

4. The applicability of the provision of Section 7(4) of the Act has been upheld by the Tribunal holding that the said provision is procedural in nature. The Tribunal has arrived at the aforesaid finding following case of Niranjan Narottam, 14 ITD 27 decided on 9.6.1985. This decision came to be confirmed by this Court in CIT vs. Niranjan Narottam, (1988) 173 ITR 693. The revenue carried the matter in appeal before the Supreme Court and in case of CWT vs. Sharvan Kumar Swarup & Sons, 210 ITR 886, the decision of this Court was confirmed by the Apex Court.

5. Following the ratio laid down in case of Sharvan Kumar Swarup (Supra), we hold that the Tribunal was justified in law in holding that the valuation of a bungalow known as "Kumkum" is required to be made in accordance with Section 7(4) of the Act. The question referred to us is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with

no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-